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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,851	08/18/2003	Anne M. Pianca	AB-334U	4016
23845	7590	04/07/2006	EXAMINER	
ADVANCED BIONICS CORPORATION 25129 RYE CANYON ROAD VALENCIA, CA 91355			ALTER, ALYSSA M	
		ART UNIT		PAPER NUMBER
				3762

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/642,851	PIANCA ET AL.
Examiner	Art Unit	
Alyssa M. Alter	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 February 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5-7 and 10-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-2, 6-7, 14-15 and 17-24 is/are rejected.  
 7) Claim(s) 5,10-13 and 16 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 18 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 24, 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments, see page 6, filed February 24, 2006, with respect to the rejection(s) of claim(s) 1-2, 5-7, 10-24 under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Baudino et al. (US 5,927,277).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 6, 14, 17 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Baudino et al. (US 5,927,277). Baudino et al. discloses an apparatus and method for securing a medical device within a burr hole.

As seen in figures 15A and B, specifically figure 15B below, the burr ring comprises a cannula portion, with a lumen and a channel 92, and a reference platform as the broad portion of the ring.

Also seen in figure 15B is the locking apparatus, 90, which holds the lead or catheter medical device at an offset within the reference platform, as seen in figure 15A.

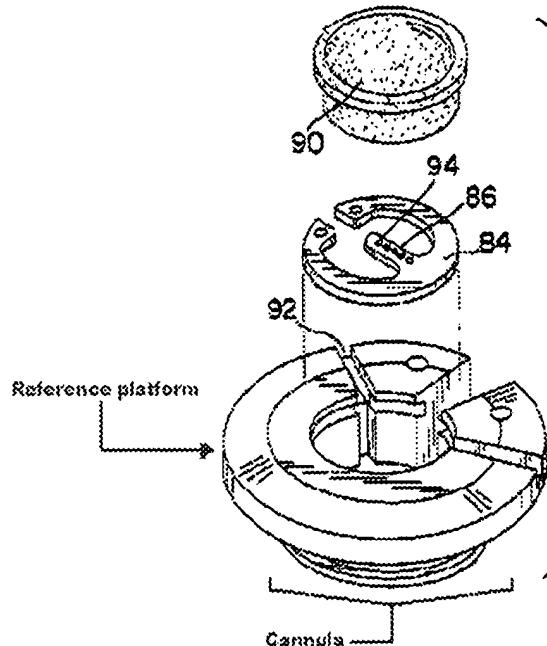


FIG. 15E

As to claim 17, the examiner considers the lock, 90, to clamp the lead to the reference platform.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1. Claims 2, 7 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Baudino et al. (US 5,927,277) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Baudino et al. (US 5,927,277) in view of Lobdill et al. (US 6,413,263).

According to Merriam-Webster {see Reference U}, stereotactic or stereotaxic means "of, relating to, or being a technique or apparatus used in neurological research or surgery for directing the tip of a delicate instrument (as a needle or an electrode) in three planes in attempting to reach a specific locus in the brain." Therefore, the examiner considers the insertion set to comprise a stereotactic frame since the insertion set can direct a delicate instrument to a specific locus.

In the alternative, although the examiner considers Baudino et al. to disclose a stereotactic frame above, Lobdill et al. further teaches that it is known to use stereotactic frame and stereotactic placement, in order to providing stability and maintenance of proper probe placement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the insertion set as taught by Baudino et al. with the stereotactic frame as taught by Lobdill et al., in order to maintain stability and accuracy with the placement of the medical device.

2. Claims 17-20 and 24 are rejected under 35 U.S.C. 103(a) as obvious over Baudino et al. (US 5,927,277). Baudino et al. discloses the claimed invention but does not disclose expressly securing the lock to the lead through clamping, pinching, suturing or piercing means. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify securing the lock to the lead as taught by Baudino et al., with the clamping, pinching, suturing or piercing means, because Applicant has not

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disclosed the other securing means provides an advantage, is used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected the Applicant's invention to perform equally well with securing the lock to the lead as taught by Baudino et al., because both means lock the lead in position to prevent unwanted movement of the lead.

Therefore, it would have been an obvious matter of design choice to modify the securing means of the lock to the lead to obtain the invention as specified in the claim(s).

As to claim 24, Baudino et al. discloses the claimed invention except for decoupling the reference platform and the cannula. It would have been obvious to one having ordinary skill in the art at the time the invention was made to separate the reference platform from the cannula, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlicnman*, 168 USPQ 177, 179. (see MPEP 2144.04)

3. Claim 23 is rejected under 35 U.S.C. 103(a) as obvious over Baudino et al. (US 5,927,277) in view of DiLorenzo (US Patent Publication 20050021104 A1). Baudino et al. discloses the claimed invention except for the microelectrode. DiLorenzo teaches that it is known to insert a microelectrode into the brain via a catheter as set forth on page 29, paragraph 381, for the purpose of treating neurological disease. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the catheter as taught by Baudino et al. for the delivery of a microelectrode as taught by DiLorenzo, since such a modification to the catheter would

enable precise delivery of both pharmaceutical and electrical stimulation.

***Claim Objections***

1. Claims 5, 10-13 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571) 272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Alyssa M. Alter*  
Alyssa M Alter  
Examiner  
Art Unit 3762

*JEFFREY R. JASTRZAB*  
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PRIMARY EXAMINER  
4/3/09